Supreme Court, U.S.
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No. 96-1513

In The

Supreme Court of the United States

October Term, 1996

DR. CHARLES BARING TRAVERS GRANT,
a citizen of Great Britain, et al.,

Petitioners,

v.

STATE OF MISSISSIPPI, et al.,

Respondents.

**Petition For A Writ Of Certiorari
To The Supreme Court
Of The State Of Mississippi**

PETITIONERS' REPLY BRIEF

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PETITIONERS REPLY BRIEF

I.

Respondents contend that Article X of the Jay Treaty creates no private cause of action. They overlook this Court's ruling and guidance in *The Head Money Cases,* 112 U.S. 580 (1884). In that case this Court observed that generally treaties are compacts between governments and enforcement depends on the interest and the honor of the governments which are parties to it. "But a treaty may also contain provisions which confer certain rights upon the citizens or subjects of one of the nation's residing in the territorial limits of the other, which partake of the nature of municipal law, and which are capable of enforcement as between private parties in the courts of the country." 112 U.S. at 598.

When such rights are created then the treaty is the supreme law of the land and may be enforced as any other individual right. Clearly the Jay Treaty in Article X creates the right that citizens of either contracting party shall never have their investments in the public debt of either contracting party confiscated or impaired by the other. Mississippi confiscated and impaired the investment of British citizens in its public debt contrary to their rights under the Jay Treaty. Mississippi, itself, has also heretofore recognized and enforced such private treaty rights. *Guisseppe v. Cozzani,* 118 So.2d 189 (Miss. 1960).

Respondents contend that the Jay Treaty has no statute of limitation therefore we must look to Mississippi's statutes of limitations for the rule as to limitations. Clearly they have not read the language of Article X of the Treaty. Its express terms provide that no statute of

limitation shall apply to the rights it creates. The treaty article uses the term "ever" twice. The Oxford English Dictionary, Second Edition, gives as the first definition of "ever" the following: "Throughout all time, eternally; throughout all past or all future time; perpetually." p. 461 (1989). The Jay Treaty perpetually forbids the actions Mississippi undertook beginning in 1842.

II.

This is a contract action against the State of Mississippi. However, Mississippi did more than simply fail to pay the bonds when due. In the period between 1842 and 1875 the State of Mississippi tried various devices to avoid payment. Some of those efforts were legal. It passed a seven-year statute of limitation on bonded indebtedness in 1872 where none had previously existed. Some of the efforts were strictly aimed at intimidating the foreign bondholders from pursuing their rights. In 1852 the State carried out a referendum to find out if the populace would support a tax to pay the bonds with predictable results. (Appendix B, p. 36) On the other hand, some of the efforts violated the United States Constitution. Petitioners' Original Complaints asserted that the failure of the State of Mississippi to pay off these bonds, in reliance on a state constitutional provision prohibiting payment of the bonds passed in 1875 after the bonds had been sold, was unconstitutional under the impairment of contracts prohibition of the United States Constitution. The State's affirmative defense that the statute of limitations had run during the pendency of Mississippi's federally unconstitutional state constitution provisions further implicated federal constitutional due

process questions in this case, as set forth in the Petition for Writ of Certiorari.

The fact that Mississippi has illegally and unconstitutionally manipulated its laws to avoid payment of the bonds does not change the contractual character of its original obligation. Nor does the fact that the petitioners have through their pleadings asserted these illegal and unconstitutional acts turn this contract action into a civil rights litigation, as respondents seem to contend.

Respectfully submitted,

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